

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

NOTICE OF MARKET-DOMINANT
PRICE ADJUSTMENT

Docket No. R2013-10

**RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO COMMISSION INFORMATION REQUEST NO. 1**
(November 5, 2013)

The Postal Service hereby files its response to Commission Information Request No. 1, issued on October 28, 2013. Each question is stated verbatim, and is followed by the response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing & Product Support

John F. Rosato

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1135
(202) 268-8597, FAX: -6187
John.F.Rosato@usps.gov

1. Is it the Postal Service's contention that changing the barcoding requirement for automation presort rates constitutes a change in a mail preparation requirement that is of a different nature than increasing the minimum number of pieces required for eligibility for Carrier Route Basic described by ANM and MPA? If so, please explain.

RESPONSE:

Yes, a change in the minimum number of pieces required to access Carrier Route Basic is significantly different from the Full-Service Intelligent Mail® barcode (IMb) requirement.¹ The major distinction between the “minimum piece” example and the Full-Service IMb™ requirement is that the former involves a change in mail preparation standards that could require mailers to alter the basic density/volume characteristics of their mailings (which are often dictated by their business models) to preserve their rate eligibility. Thus, under the hypothetical “minimum piece” change offered by ANM, mailers would likely experience an increase in postage costs for their existing volumes.²

The same is not true for the proposed Full-Service IMb change, which does not require mailers to change the underlying characteristics of their mailings (e.g. density or volume) in order to qualify for an existing rate. Rather, the Full-Service IMb change only requires mailers to adopt a new barcode format when preparing their existing mailings. Additionally, unlike the “minimum piece” change, the Full-Service IMb requirement also

¹ At the outset, it is important to note that the Postal Service's response to ANM's hypothetical “carrier route” example does not endorse the notion that mail preparation changes should be counted as part of the price cap calculation. Rather, the Postal Service's response merely outlines how the “constant mail mix” approach to calculating price cap compliance could be used to account for such changes. Accordingly, the Postal Service does not believe that it is fair to characterize its position as having endorsed the inclusion of mail preparation changes in the price cap calculation.

² Preparing the mail using the new bundle minimums would tend to create less finely presorted mail, so postage could increase when a mailer prepares their existing mailings according to the new preparation requirements. This possibility is not shared by the Full Service IMb requirement, under which mailers who comply with the new DMM rules face no postage increase.

provides clear benefits to mailers by increasing the visibility of their mailpieces as they are processed. Indeed, the Postal Accountability and Enhancement Act (PAEA) itself recognizes that intelligent mail increases the value of the mail for “postal users.” 39 USC 3622(c)(13). As the most recent billing determinants show, a significant number of commercial automation mailers are already in compliance with the Full-Service IMb requirement. Given the ongoing outreach efforts described in its response to CHIR3, Question 1, filed on October 24th, 2013, the Postal Service believes that current automation mailers will be compliant with the Full-Service IMb requirement by the time the Postal Service begins enforcing in July of 2014 (for customers filing electronic documentation), and thus will avoid any increase to their postage costs.

Significantly, the recent withdrawal of Presort rate eligibility for mailers using POSTNET™ barcodes (See 77 FED. REG. 26185 (May 03, 2012)) provides an informative illustration of how mailers can, and will, adopt technological changes in order to maintain their access to automation rates. Similar to the present Full-Service IMb adoption rate, only 79 percent of commercial mailers had begun using the basic IMb in June of 2012. However, as a result of outreach efforts similar to those currently being conducted by the Postal Service for Full-Service IMb, approximately 96 percent of commercial mailers had adopted the basic IMb by March of 2013. Consequently, all but a few mailers did not experience any increase in their postage costs as a result of the adoption of this new mail preparation rule. Despite the similarity between the POSTNET and Full-Service IMb changes, it is noteworthy that neither the Commission nor any mailer suggested that changing POSTNET eligibility implicated the price cap.

Mailers' have exhibited similar silence on the price cap implications of changes in mail preparation standards that save them money.

2. Is it the Postal Service's contention that changing the barcoding requirement for automation presort rates constitutes a change in a mail preparation requirement that is of a different nature than increasing the threshold below which the Move Update Assessment Charge applies to presorted mailings? If so, please explain.

RESPONSE:

Yes, increasing the threshold below which the Move Update Assessment Charge applies to presort mailings is different from the proposed Full-Service IMb changes. The primary distinction between the change in the Move Update threshold and the Full-Service IMb requirement is that the former is primarily designed to raise a price, the amount of the assessment for failing to update addresses adequately. Indeed, mailers who were out of compliance under the old move update threshold would subsequently be charged a higher penalty. Similarly, those mailers who previously barely met the move update threshold (between 70 and 75 percent compliance), and were charged a penalty of \$0, would subsequently be assessed a higher charge.³ Thus, the Move Update threshold change can fairly be categorized as a price change, rather than a mail preparation change.

The same cannot be said for the Full-Service IMb requirement, which does not carry with it any changes in price. Rather, as described above in response to Question 1 of this Information Request, it is doubtful that the Full-Service IMb change will result in mailers being charged higher prices. Given the current Full-Service IMb adoption rate and its ongoing outreach efforts, the Postal Service anticipates that mailers will be compliant with the new barcode requirement by the time enforcement begins.

³ In this regard, it is important to note that changes to the Move Update threshold required the Postal Service to change the pricing sections in the MCS. The same cannot be said for the Full-Service IMb requirement, which requires no MCS change, but rather only a description change in the Domestic Mail Manual.

3. As noted, 3010.23(d) requires adjustments to account for a redefinition of rate cells. Please explain why the Postal Service does not believe the change in the barcoding requirement for automation presort rates is “redefining rate cells.”

RESPONSE:

39 C.F.R. § 3010.23(d) states that the Postal Service shall make reasonable adjustments to the billing determinants “to account for the effect of classification changes such as the introduction, deletion, or redefinition of rate cells.” Much of the confusion as to how this rule should be applied centers around the definition of a “classification change.” As explained below, the Postal Service believes that a “classification change” occurs only when modifications are made to the Mail Classification Schedule (MCS).⁴ Since the Full-Service IMb requirement does not change any rates or definitions listed within the MCS, it does not represent a redefinition of rate cells as specified in rule 23(d).

As described by the PRC and court precedent, the purpose of mail classification is to “identify [] groupings of mail for the purpose of setting rates.”⁵ The limits of this definition are embodied in the statutory scheme, which creates precise procedures for changing prices and applying the price cap limitation. In particular, 39 U.S.C. § 3622(B)(8) established as objective of a modern system for rate regulation “a just and reasonable schedule for rates and classifications.” This rate/classification schedule is further referenced in Section 3621(c), where it states that the products listed in § 3621(a) shall be defined by reference to the “meaning given to such mail matter under

⁴ The definition of what constitutes a classification change has evolved over many years of sometimes contentious debate and litigation. Throughout that process, the Commission has consistently attempted to evaluate the issues in light of the balance of authorities that Congress created in the statutory scheme, including the explicit procedures established for changing rates and classifications, and the practical needs and consequences associated with determining the proper scope and extent of the classification schedule.

⁵ See PRC Op., MC95-1, at ¶ 1007.

the *mail classification schedule*.” (emphasis added). The Postal Service has consistently taken the position that, read together, these provisions indicate that it is appropriate to “maintain a ‘mail classification schedule’ for regulatory purposes, separate and distinct from customer-focused operational documents such as the Domestic Mail Manual.”⁶

This interpretation is also in keeping with the Commission's practice of not requiring the Postal Service to file a price cap case when it is only changing DMM rules, rather than also changing prices. Indeed, if the definition of “mail classification” were expanded to include all mail preparation changes under the DMM, the Commission would be forced to review dozens of the Postal Service's DMM changes for price cap impact throughout the year, a much broader role than the PAEA contemplated. Instead, Rule 23(d) recognizes that price change cases may also include classification changes that move volumes among the various price categories. In that case, the Postal Service must adjust its billing determinants to reflect the classification changes.

⁶ See Docket No. RM2007-1, Supplemental Comments of the United States Postal Service on the Classification Process, at 11 (June 19, 2007).

4. Is it the Postal Service's position that "a fair process for evaluation of compliance with the cap" should reflect the rate impact of "existing mail shift[ing] from one category to a second category due to changes in mail preparation requirements"? See Postal Service Reply Comments at 3-4.
 - a. If yes, please explain how the Postal Service's treatment of the change in eligibility requirements for automation rates is consistent with this position.
 - b. If no, please explain how and why the Postal Service's position has changed.

RESPONSE:

As explained above, the Postal Service believes that the application of 39 U.S.C. § 3622(d)(1)(A) under the Commission's rules should be limited to actual changes to the MCS noticed by the Postal Service pursuant to Section 3622(d)(1)(C). To expand the application of the price cap to mail preparation standards (or constructive/de facto price changes) would be inconsistent with the plain reading of Title 39.

As section 3622(d)(1)(B) makes clear, the modern system of rate regulation shall include "a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts." As further provided in Section 3622(d)(1)(C), the mechanism for changing the schedule of rates is Postal Service public notice of such changes, subject to Commission review. Since the only rate and classification schedule mentioned in Chapter 36 is the Mail Classification Schedule, the plain reading of the statute indicates that the CPI price cap applies only to adjustments in rates listed in the MCS and noticed by the Postal Service. Strikingly, no mention is made (in the statute or the legislative history) of applying the price cap to changes in mail preparation standards, or any other relationships outside of the Postal Service's notice of rate changes.

Moreover, the PAEA established “an annual limitation on the percentage change in rates.” 39 U.S.C. § 3622(d)(1)(A). The use of “change in rates” excludes a limitation on other changes in revenue beyond a change in rates. If a rule change shifts volume to higher price categories, without changing any rates, then the limitation established by the PAEA does not apply.

Notwithstanding the above, should the Commission adopt the position that its responsibilities under the price cap include the evaluation of mail preparation changes, such as the Full-Service IMb requirement, clearly 39 C.F.R. § 3010.23(d) does not require the unthinking use of prior year billing determinants, especially in the face of past experience and/or reasonable evidence to the contrary.⁷ Indeed, the rule admits of, and requires, “reasonable adjustments based on known mailer characteristics.” What’s more, in its recent rulemaking dealing with 3010.23(d), the Commission noted that the “best available data” would be used to make such adjustments. See Order No. 1786, at 20 (July 23, 2013). Reasonable expectations based on demonstrated mailer activities and reliable trends should necessarily dictate the result.

Again, the POSTNET experience is persuasive in this regard. Whereas only 79% of commercial mailers using POSTNET had shifted to IMb in June of 2012, that percentage had increased to approximately 96% by March of 2013. Had the Commission applied Rule 3010.23(d) to the POSTNET rulemaking (e.g. used historic billing determinants to evaluate the impact of the rule change on the price cap) it would have incorrectly presumed that the rule change would generate millions of dollars in additional revenue, thus denying the Postal Service critical cap space when it could

⁷ The Postal Service has most recently advanced this position in its comments during the recent rulemaking on the Commission’s price cap rules. See Docket No. RM2013-2, Initial Comments of the United States Postal Service, at 4-5 (May 16, 2013).

least afford it. Accordingly, any application of Rule 3010.23(d) to changes in mail preparation standards must involve a close examination of whether mailers are likely to modify their behavior in response to the change.

Beyond the inappropriateness of interpreting Rule 3010.23(d) to apply to changes in mail preparation standards, such an interpretation would have lasting and negative consequences on the Postal Service's finances, and would be inconsistent with the statutory scheme, which guarantees the Postal Service's pricing flexibility and gives it broad powers to manage the nation's mail system. Such a strained interpretation would in many instances severely distort the financial and operations choices that management must make. For example, if the Postal Service developed a new processing machine that greatly increased efficiency but required that mail be prepared in a different way, the broad reading of Rule 3010.23(d) would create a perverse incentive to not deploy the new machine, since it would cost the Postal Service price cap space. Additionally, such an interpretation of Rule 3010.23(d) would significantly increase the burden of litigating the annual CPI price-adjustment cases on both the Postal Service and the Commission. Were the Postal Service forced to calculate the price cap impact of every DMM rule change it makes in a given year (many of which benefit mailers), the Commission would be forced to review dozens of additional calculations in the short period of time provided for review. The Postal Service does not believe that such an additional burden is in keeping with the pricing and classification flexibility afforded it by the PAEA.